

REMARKS

Reconsideration of the application is respectfully requested. Support for all of the amendments made is found in the specification as filed. Claims 1-7 are currently pending. No new matter has been added.

Applicant's undersigned counsel thanks the Examiner for courtesies extended during our recent telephone conference.

The Office Action objects to the disclosure because on page 5 trademarked products appear but are not capitalized. In response, applicant has amended the paragraph beginning on page 5, line 15 to capitalize the trademark terms.

In light of the amendment to the specification and these remarks, applicant respectfully requests withdrawal of the objection to the disclosure.

The Office Action objects to claims 1-7 because of informalities as the phrases "200mm", "0.1mm" and "200mm" in claims 1 and 4 should allow a space between the number and the unit. Further, claims 2-3 and claims 5-7 depend from claims which do not exist in the case.

In response, claims 1 and 4 have been amended to include the requested space. Further, the dependencies of claims 2-3 and 5-7 have been amended to claims which do exist in the case. S

In light of the amendment to the claims and these remarks, applicant respectfully requests withdrawal of the objections to claims 1-7.

The Office Action rejects claim 7 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the office action states that the language "not including an aggregate, including glass beads" is contradictory because the glass beads are aggregates. In response, claim

7 has been amended to delete the phrase “,including glass beads”.

In light of the amendments and the above remarks, applicant respectfully requests withdrawal of the rejection of claim 7 under 35 USC 112, second paragraph.

The Office Action rejects claims 1-6 under 35 USC 103(a) as being unpatentable over Uchiya et al. (US2001/0010858 A1) in view of Frenkel (US2002/0198291 A1) and Jurrus et al. (U.S. Patent 4,844,964). Applicant respectfully traverses this rejection.

As discussed in the telephone conference previously referenced, applicant’s claims priority from earlier applications. Specifically, this application is a divisional of application Serial No. 09/993,529 filed November 14, 2001, now U.S. Pat. No. 6,692,566, which is a continuation-in-part of Serial No. 09/335,021 filed June 17, 1999 which is a continuation-in-part of Serial No. 08/693,298 filed October 30, 1996, now abandoned, which is a Section 371 continuation of PCT/AU96/00075 filed February 16, 1995. The earlier applications clearly predate the cited references Uchiya et al. and Frenkel.

The earlier applications differ from the present in the substitution of the term “concrete fortifier” instead of “polymeriser”. The products used have not changed, merely the terminology used to describe same generically. “Concrete fortifier” was coined by assignee’s current supplier, Xypex Corporation of Australia, as a generic term describing its commercially available XYCRILIC™ product line. These products do not fit in standard generic terms such as hardener, accelerator, plasticizer and the like but are new formulations with differing properties. Thus, new terminology is needed to describe the product line generically.

In the earlier applications, applicant used the term “polymeriser” which drew a 35 USC 112, second paragraph, rejection in applicant’s parent case (Office Action dated June 30, 1997 in Ser. No.


08/693,298). It should be noted that the term "polymeriser" is still used in applicant's corresponding foreign patents which issued in Australia and the European Patent Office. However, to overcome the referenced rejection and for consistency with the Xypex Corporation's Material Safety Data Sheet terminology, applicant elected to use the term "concrete fortifier" in the present application.

Thus, the earlier filed specification fully supports the claims of the present application. Thus, neither Uchiya et al. nor Frenkel qualifies as prior art under 35 USC 102, MPEP 706.02 (V)(B). Further, none of the references, either singly or in combination, suggest or teach the use of a concrete fortifier as in the present claims.

In light of the above remarks, applicant respectfully requests withdrawal of the rejection of pending claims 1-6 under 35 USC 103(a).

In light of the above amendments and remarks, Applicant believes that the application is now in condition for allowance such action is earnestly solicited.

Respectfully submitted,



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